

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION III

CA05-744

MAY 16, 2007

DEANN LATIOLAIS

APPELLANT

APPEAL FROM THE FAULKNER
COUNTY CIRCUIT COURT
[NO. JV-2004-6]

V.

HON. LINDA P. COLLIER, JUDGE

ARKANSAS DEPARTMENT OF
HUMAN SERVICES

APPELLEE

AFFIRMED; MOTION GRANTED.

This one-brief appeal arises from an order of the Faulkner County Circuit Court granting a petition filed by appellee, Arkansas Department of Human Services (DHS), to terminate the parental rights of appellant, Deann Latiolais, and her husband to V.L. and D.L., their seventeen-month-old son and five-month-old daughter. Appellant's attorney has filed a no-merit brief pursuant to *Linker-Flores v. Arkansas Department of Human Services*, 359 Ark. 131, 194 S.W.3d 739 (2004), and has filed a motion requesting to be relieved as counsel. The clerk of this court sent a certified copy of counsel's brief and his motion to be relieved to appellant, informing her that she had the right to file pro se points for reversal under Ark. Sup. Ct. R. 4-3(j)(2). The certified packet was returned as unclaimed, and appellant has not filed points for reversal.

Counsel's motion to be relieved is accompanied by a brief listing all adverse rulings made at the termination hearing and explaining why there is no meritorious ground for reversal of each ruling. Counsel's brief also includes a discussion of the sufficiency of the evidence to support the termination order based on evidence presented at all the prior proceedings. The children's guardian ad litem has notified this court that she agrees with appellant's counsel that there is no merit to the appeal, and she has informed us that she would file no brief because appellant has not submitted arguments with merit. DHS has not filed a brief but, in response to appellant's notice of appeal, has designated the entire record.¹

Under Arkansas Code Annotated section 9-27-341(b)(1)(A) (Supp. 2005), the circuit court may consider a petition to terminate parental rights if the court finds that there is an appropriate permanency placement plan for the juvenile. Subsection(b)(3) states that an order terminating parental rights shall be based upon a finding by clear and convincing evidence that termination is in the best interest of the juvenile after considering the likelihood of adoption and the potential harm, specifically addressing the effect on the health and safety of the child caused by continuing contact with the parent, and that termination is founded based on one or more statutory grounds for termination.

¹The clearly erroneous standard of review contemplates a review of the entire record. *Busbee v. Arkansas Dep't of Human Servs.*, ___ Ark. ___, ___ S.W.3d ___ (April 12, 2007). Where the order terminating parental rights specifically incorporates into the record previous pleadings and exhibits, the record on appeal should include those items. *Id.* Here, appellant's counsel has abstracted testimony from all pertinent hearings, and the record designated by DHS includes all other items that the trial court incorporated into the proceeding.

Here, the circuit court found that it was contrary to the children's best interests, health and safety, and welfare to return them to the parental care and custody of their parents. Regarding statutory grounds as to appellant's son, the circuit court found that he had remained out of the home for more than twelve months and, despite a meaningful effort by DHS to rehabilitate the home and correct the conditions that caused removal, those conditions have not been remedied by the parents. Regarding appellant's daughter, the court found that there was little likelihood that services to the family would result in successful reunification with her parents. The court found that DHS had made reasonable efforts to reunite the family and that DHS had an appropriate placement plan, namely adoption, for the juveniles. Counsel's brief examines the sufficiency of the evidence to support the circuit court's findings. After a careful examination of the entire record, we are convinced that the circuit court did not clearly err in finding that clear and convincing evidence supports the termination of appellant's parental rights.

Counsel's brief includes the two rulings that were adverse to appellant at the termination hearing. First, the circuit court sustained an objection by DHS that counsel's asking a case worker if appellant was "just worn completely out" required speculation; second, the court ruled that counsel's hearsay objection to testimony by a CASA volunteer concerned material already admitted in the CASA report. We agree with counsel that appellant was not prejudiced by these evidentiary rulings, nor were they in error.

Based on our examination of the record, we find that counsel has complied with the requirements established by the Arkansas Supreme Court for no-merit motions in termination

cases, and we hold that the appeal is wholly without merit. Consequently, we grant counsel's motion to withdraw and affirm the order terminating appellant's parental rights.

Affirmed; motion granted.

PITTMAN, C.J., and GRIFFEN, J., agree.